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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**INCOME TAX APPEAL (L) NO.1042 OF 2011**

The Commissioner of Income Tax – 25, Mumbai

..Appellant.

Versus

Naishadh V. Vachharajani

..Respondent.

Mr.Suresh Kumar for the appellant.

**CORAM : J.P. Devadhar &  
K.K. Tated, JJ.**

**DATE : 22<sup>nd</sup> September 2011**

**P.C. :**

1. Whether the Income Tax Appellate Tribunal was justified in holding that the income arising on transfer of shares were liable to be assessed as short term capital gains / long term capital gains instead of assessing the same as business income, is the question raised in this appeal.
2. The assessment year involved herein in AY 2006-07.
3. The assessee is a marine consultant. He had carried on the business of trading in shares and had also made investments in shares. In the assessment year in question, the assessee had sold certain shares held as investments and gains arising on account of sale of these shares were offered

as long term capital gains / short term capital gains, as the case may be. The assessing officer held that the said income were liable to be assessed under the head 'business income'.

4. The Tribunal in para 6 and 7 of its judgment has recorded a finding that in a number of cases the assessee had held the shares for more than 10 years and wherever the assessee has purchased and sold the shares within a period of one year, income arising therefrom have been offered to tax as short term capital gains in the assessment year 2005-06 and the same have been assessed accordingly.

5. This Court in the case of *Commissioner of Income Tax V/s. Gopal Purohit* reported in **228 ITR 582 (Bom)** has held that it is open to an assessee to trade in the shares and also to invest in shares and wherever, the shares are held as investment, then the income arising on sale of those shares are liable to be assessed as long term / short term capital gains.

6. In these circumstances, in the facts of the present case, the decision of the Income Tax Appellate Tribunal in holding that the income arising on sale of the shares held as investment were liable to be assessed as long term capital gain / short term capital gain cannot be faulted. In the result, the appeal is dismissed with no order as to costs.

(K.K. Tated, J.)

(J.P. Devadhar, J.)